

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: January 18, 2017

Opposition No. 91220488

Fita Preta Vinhos, LDA, LLC

v.

Two Hands Wines Pty Ltd

Veronica P. White, Paralegal Specialist:

Opposer's consented motion, filed January 3, 2017, to further suspend this proceeding for an additional 60-days is granted.

Because the parties are negotiating for a possible settlement of this case, proceedings remain suspended, subject to the right of either party to request resumption at any time.¹ *See* Trademark Rule 2.117(c), and 2.127(a); and TBMP § 605.02).

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1).

¹ The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. *See* Trademark Rule 2.117(c).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set forth in Opposer's motion.

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Progress Report Required for Any Further Motions to Extend or Suspend for Settlement

The Board has granted numerous motions to extend and suspend (totaling more than one year) to accommodate the parties' settlement efforts. In view of the amount of time already granted, any prospective motion to extend, suspend, or reopen, based on settlement, must establish good cause by way of a **detailed report** setting forth what progress the parties have made towards settlement during the previously granted period of extension or suspension. This report must set forth, at a minimum,

1) all dates on which the parties communicated, and the method of each communication (e.g. telephone, email, in-person meeting), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for resolution of the unresolved issues. Appropriately designated confidential information or materials may be filed under seal and will be barred from public viewing. *See* Trademark Rule 2.126(c); TBMP §§ 120.02 and 502.02(c).

Due to the requirement for a detailed progress report, the *parties can no longer use the ESTTA “consent motions” option to file future motions to extend or suspend. Instead, they must use the “general filings” option in ESTTA and attach the report along with a proposed amended schedule.*² *See* TBMP § 509.02.

Absent a progress report as required above, a motion to extend or suspend may be denied, even if consented to by the parties. If the Board denies such a motion, dates may remain as previously set. *See* TBMP § 509.01(a).

² When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates. Trademark Rule 2.121(d).